Ontario

ANNUAL REPORT

Environmental Review Tribunal

April 1, 2001 to March 31, 2002

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Chair's Message

I was honoured to be appointed Chair of the Environmental Review Tribunal in December of 2001. This Annual Report primarily deals with the term of my predecessor, Carl F. Dombek.

I would like to congratulate him on a job well done. I want also to extend appreciation from the other members of the Tribunal and myself to Len Gertler, a well-respected member of the Tribunal since May 17, 1990, whose appointment ended in May of 2001.

This report provides a detailed picture of the Tribunal's activities this past fiscal year. I would like to address a particular key achievement – the Niagara Escarpment Review Hearing. This was headed up by Knox M. Henry and David Pearson. It was a major undertaking with 104 participants. The complexity of this hearing together with the increased workload of the Tribunal led to efforts to improve the case management system. To improve public access and involvement, the Tribunal posted written submissions on its website. This also alleviated the problem of a substantial number of participants appearing simultaneously as occurred during the Plan Review five years previously.

The success of this understaking was made possible by strong and imaginative staff support. This was recognized by the Ministry of the Environment, which awarded the staff the coveted Emerald Award for "Innovation" for their efforts.

A Ministry review of water systems across the Province generated 52 new water system appeals between January 21 and March 31, 2002. The Tribunal has scheduled a series of public information sessions as an innovative method of informing and involving the public in this process. Including these, the Tribunal received 247 new cases compared to 187 in the previous year.

In the past few months as Chair, I have come to know the Vice Chairs, Members and staff of the Tribunal. I can attest to their hard work and conscientious approach to their responsibilities.

Based on this year's strong performance, we at the Tribunal look forward to the exciting challenges ahead as environmental issues take on an even higher profile for the people of Ontario.

Ian McPhail Q.C.
Chair

June 27, 2002

Tribunal Structure

The Tribunal's Mandate

The Environmental Review Tribunal was established under the *Environmental Review Tribunal Act, 2000.*

The Tribunal functions as a quasi-judicial tribunal, subject to the rules of natural justice, the requirements of its governing legislation and the *Statutory Powers Procedure Act.* The Tribunal adjudicates applications and appeals under the following statutes: the *Environmental Assessment Act*, the *Environmental Protection Act*, the *Ontario Water Resources Act*, the *Pesticides Act*, the *Consolidated Hearings Act*, the *Environmental Bill of Rights, 1993* and the *Niagara Escarpment Planning and Development Act.* For an overview of the legislation, refer to Appendix A.

The Tribunal's mandate is to provide an independent review of decisions of the Directors of the Ministry of the Environment, and a fair public hearing process that assesses the merits of proposed development projects, plans or programs that will have an impact on the environment.

Under the *Niagara Escarpment Planning and Development Act*, the Minister of Natural Resources appoints members of the Tribunal as Hearing Officers to conduct hearings and make recommendations concerning decisions of the Niagara Escarpment Commission ("NEC"). The NEC appoints members of the Tribunal as Hearing Officers to conduct hearings for the purpose of receiving representations respecting proposed amendments to the Niagara Escarpment Plan, when objections have been made to the proposed amendments, or for the purpose of periodic review of the Plan.

The Environmental Review Tribunal also functions as the Office of Consolidated Hearings to hear applications made under the *Consolidated Hearings Act.* A Joint Board can be established under the authority of the *Consolidated Hearings Act* in order to eliminate a multiplicity of hearings before different tribunals on matters relating to the same undertaking. The composition of a Joint Board may be drawn from members of the Environmental Review Tribunal and the Ontario Municipal Board. A Joint Board is empowered to hold a hearing to consider all of the matters under all of the acts the proposal is subject to and for which hearings are required.

The principal task of Tribunal members, who are Lieutenant Governor in Council appointees, is to conduct fair, efficient and impartial hearings. Tribunal members must consider all the evidence presented, and make decisions (or recommendations) with written reasons based on that evidence, in a manner that protects the environment and is consistent with the Tribunal's governing legislation. For a profile of the Tribunal members, refer to Appendix B.

Core Businesses of the Tribunal

The Environmental Review Tribunal has four core businesses which are:

1. **Hearings and Decision Making**
2. **Staff Processing of Hearings**
3. **Outreach**
4. **Alternative Dispute Resolution**

1. Hearings and Decision Making

This component is entirely in the hands of the Tribunal members, all of whom are Order-in-Council appointees, and includes hearings held by members and their written decisions.

All recommendations/decisions made under the *Niagara Escarpment Planning and Development Act* on permit development applications are required by legislation to be made within 30 days of the conclusion of the hearing or within such longer period as the Minister of Natural Resources may allow. Niagara Escarpment Plan amendment application decisions must be rendered not more than 60 days after the conclusion of the hearing or within such extended time as the Niagara Escarpment Commission may specify. Tribunal decisions on the *Environmental Bill of Rights, 1993* leave to appeal applications are to be made within 30 days after the day on which the application is filed, unless the Tribunal determines that, because of unusual circumstances, a longer period is needed. In all other types of decisions, Tribunal Members will endeavor to render their decision within 30 days of the completion of the hearing or the filing of final written submissions (if ordered by the hearing panel).

2. Staff Processing of Hearings

This core business includes all administrative steps necessary to process an appeal/application from the date of first filing to the beginning of the hearing. The Tribunal hears appeals/applications pursuant to seven different statutes. When an appeal/application is received, it is dealt with through one of five different administrative processes. Each process includes:

- screening the appeal/application to assess its compliance with the Act under which it was filed;
- assigning it to the appropriate hearing process;
- scheduling the hearing;
- monitoring and administering the process through to the rendering of the written decision and the closure of the file.

5. Outreach

The outreach core business of the Tribunal has both passive and active components.

The passive component of the Tribunal's outreach core business consists of a number of initiatives. The Tribunal has created brochures, flyers and other publications explaining its role and procedures to be distributed to clients upon request. Also, the Tribunal has created and maintained a website which provides a wide variety of material on an ongoing basis. Website users have 24-hour access to current information regarding the Tribunal and its hearings, including its decisions, forms, relevant statutes, and Rules of Practice. Website users may also view the information presentation on the Tribunal's website.

The active component of the Tribunal's outreach core business includes a number of initiatives. These include staff responses to questions from clients, public information and education sessions delivered by senior staff or Tribunal members, and stakeholder consultation. The Information Sessions are held by the Tribunal to inform the public of the hearing process prior to complex hearings. Upon request, education sessions are held to educate various public groups about the Tribunal's jurisdiction, processes and other matters. Due to a recognized greater public interest, the Tribunal has included public information sessions as part of the scheduling process for the large number of appeals received pertaining to municipal water systems. The Tribunal has formed a Client Advisory Committee of stakeholders to assist in providing feedback regarding new policies, procedures and general operational issues. The public can also provide feedback to the Tribunal by using the form created on the website for that purpose.

6. Alternative Dispute Resolution Services

The Tribunal's senior staff and several of its members have received certified training in Alternative Dispute Resolution (ADR) and are experienced mediators. Mediation, generally conducted 30 days before the commencement of a hearing, is offered to all parties appearing before the Tribunal, and before the Niagara Escarpment Hearing Office.

Rules of Practice and Guidelines

On June 22, 2001, the Rules of Practice were revised and adopted by the Tribunal. Since that time, the Rules, Practice Directions and Guidelines have undergone a further review and more refinements. Suggested amendments were drafted and, in November 2001, posted on the Tribunal's website to invite comments from the public. The proposed revisions were also circulated among the Tribunal's Client Advisory Committee and other organizations such as the Ontario Bar Association, the Canadian Environmental Law Association and other groups interested in environmental hearing issues. Comments and suggestions were received and

considered by the Tribunal and a revised set of Rules, Practice Directions and Guidelines is currently being prepared.

The Rules, Practice Directions and Guidelines remain open to review and revision as circumstances and new legislation may dictate in order to reflect the changing needs of the Tribunal and the public.

Niagara Escarpment Plan Review Hearing

The Niagara Escarpment Plan Review Hearing continued into the fiscal year. At the conclusion of last fiscal year, the Hearing Officers had released procedural orders which set out two phases to the hearing. The first phase was a written one, where participants filed their submissions for posting on the website. The second phase was an oral one where participants made submissions to the Hearing Officers.

The Tribunal, in its role as the Niagara Escarpment Hearing Office, dedicated a portion of its website to allow public access to all written submissions filed, all written questions filed, and all answers to the written questions filed for the written phase of the hearing. This website also included background documents and electronic forms to file submissions. The Hearing Office also provided public libraries in Hamilton, Milton, St. Catharines, Owen Sound and Orangeville, as well as the Niagara Escarpment Commission offices in Georgetown and Thornbury, with information on the Hearing for use by the public. Niagara Escarpment area libraries also provided access to the website for members of the public who did not have that capability.

Many participants were initially critical of the procedural rules for the hearing, largely because they did not allow for oral cross-examination of one party's presenter by another and relied heavily on an electronic submission process.

We acknowledge that some people may have felt disadvantaged by needing to make their submissions electronically, however, being able to make all the submissions accessible on a website, coupled with electronic question and answer capability, allowed more people to become informed and involved in a greater depth than in the traditional process. From April 1, 2001 to March 31, 2002, a total of 59,260 requests were received by the Plan Review Hearing website with 5,110 visitors. A list of most popular downloads from the dedicated website are listed in Appendix E. This website still remains available.

A total of 110 participants made oral and/or written submissions and many attended during the course of oral presentations held between July 10 and August 10, 2001 in Orangeville, St. Catharines, Owen Sound and Milton. Participants who made a submission before the filing deadline were allowed 20 minutes to present their views, while those who did not were given 10 minutes. The locations and times of the Hearing were advertised in local papers in January 2001 and again about ten days in advance of the hearing.

At the conclusion of the hearing, the Hearing Officer sought feedback from the participants in the form of a questionnaire. For highlights of the results of this feedback refer to page 22 of the report.

The Hearing Officer rendered her recommendations to the Minister of Natural Resources on October 10, 2001.

Ministry of the Environment's Emerald Award

In February, 2002, the staff of the Environment Review Tribunal were awarded the 2001 Ministry of the Environment's Emerald Award in the category "Innovation" for their work on the Niagara Escarpment Plan Review Hearing. The team included: Karen Hamlin, Donna Bowes, Susan Dunn, Sue Elliot, Danielle Lee, Gaye McCarthy, Marlene Mills and Dina Ouellet.

Client Advisory Committee

The Environment Review Tribunal's Client Advisory Committee (ECAC") is composed of Stephen Garrick, John Jackson, Sue Lynas, Richard Lindgren, Isabelle D'Ornano and Craig Tubby. On November 19, 2001, the ECAC met in the formal meeting with the Chair of the Environment Review Tribunal and senior staff. At this meeting, the Committee established Terms of Reference and provided comments on proposed revised Rules of Practice, Practice Directions and Guidelines. The Committee will meet with the members of the Tribunal at its next meeting.

Administrative Liaison Committee

The Lands and Waters management of the Niagara Escarpment Commission, the Environment Commissioner of Ontario and Operations Division and the Environmental Assessment and Approvals Branch of the Ministry of the Environment, the Lands and Waters Branch of the Ministry of Natural Resources and the Tribunal participate in a forum for the exchange of information and ideas related to their respective administrative systems, as they impact upon each other. The Committee met on April 23, 2001 and we look forward to future meetings.

In-House Learning Program

The Tribunal has continued to conduct its Learning Program for its members and staff. The Learning Program provides half-day workshops and seminars on topics of relevance to the Tribunal. This fiscal year, the Tribunal hosted a number of outstanding speakers. In conjunction with the government's initiative on cooperation, the Tribunal has expanded the invitation to attend to other organizations. Members and staff from the Agriculture, Food and Rural Affairs Tribunal, the Environmental Commissioner's Office, the Ministry of the Environment, the Ministry of Natural Resources and the Niagara Escarpment Commission attended sessions. For a

completion list of the Learning Program's workshops and seminars held in the fiscal year, refer to Appendix C.

Review on and Council Member Guidance Committee

In September 2001, the Head of the Environmental Review Tribunal wrote to each of the members of the liaison committee to seek advice as to whether to reconvene the committee to revisit areas of mutual interest. An unofficial liaison may exercise the Tribunal for an unlimited any future meetings although the participating agencies are invited to attend the Tribunal's Learning Program sessions.

Environmental Compensation Corporation

The Environmental Compensation Corporation ("ECC") provides compensation under the authority of the Environmental Protection Act to persons who suffer loss or damage as a direct result of an environmental spill. Generally, it is a cause of last resort, as applicants are required to make all reasonable efforts to obtain compensation from the persons responsible for the spill. In June 1997, the Environmental Approvals Improvement Act, 1997, was passed. It provides that no applications for the payment of compensation received after June 1, 1996, for loss or damage directly resulting from a spill shall be processed or paid by the ECC. May 1, the outstanding applications ceases. However, these applications cannot be considered until the related civil actions have been completed. The ECC no longer has staff and is the regular of the Ministry of the Environment. As Tribunal's counsel monitors the outstanding applications and assists in their eventual resolution.

Resource Steering to the Agency Review

Susan M. Heavy, Vice-Chair, is now appointed as a part-time member of the Ontario Energy Board Hearing Tribunal ("OEBHT"). The Tribunal agreed to share up to five days per month of Ms. Vice-Chair's time to allow her to sit on hearings of the OEBHT. This initiative is part of the Tribunal's overall commitment to sharing resources within Ontario's Agency sector.

The Tribunal's offices are located within the same office tower as the offices of the Ontario Energy Board ("OEBP"). As a result of an agreement between the Chairs of both Tribunals, the Tribunal receives its Internet and e-mail access through the OEBP's connection.

Space allocated to the Tribunal's offices is occupied by the Ontario Pesticides Advisory Committee ("OPAC"). The Tribunal currently shares resources with OPAC that include the provision of a local area network support, a common entrance and lobby reception, and other administrative functions.

Law Co-op Program

The Tribunal participated in the University of Victoria's Law Co-op Program. John Carlisle and Bonnie Penfold, law students, worked at the Tribunal from May to August 2001. They assisted the Chair, members and counsel with various law-related assignments.

Tribunal Activities

Case Type	No. of Unresolved Cases Carried Forward into 01-02 Fiscal Year	No. of New Cases Received in 01-02 Fiscal Year	No. of Cases Resolved in 01-02 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 01-02 Fiscal Year by Tribunal Approved Settlements	No. of Cases Closed in 01-02 Fiscal Year by Other Means*	No. of Cases Carried Forward into 02-03 Fiscal Year	No. of Hearing Days Held in 01-02 Fiscal Year**	No. of Tribunal Days Held on Other Matters in 01-02 Fiscal Year***	No. of Tribunal Days Held on ADR in 01-02 Fiscal Year
ENVIRONMENTAL ASSESSMENT ACT									
Applications by Referral	0	0	0	0	0	0	0	0	0
ENVIRONMENTAL PROTECTION ACT									
Applications by Referral	0	0	0	0	0	0	0	0	0
Appeals	15	57	6	7	38	21	27	35	11
ONTARIO WATER RESOURCES ACT									
Applications by Referral	0	0	0	0	0	0	0	0	0
Appeals	16	85	13	2	23	63	75	18	6
PESTICIDES ACT									
Appeals	0	2	2	0	0	0	0	1	0

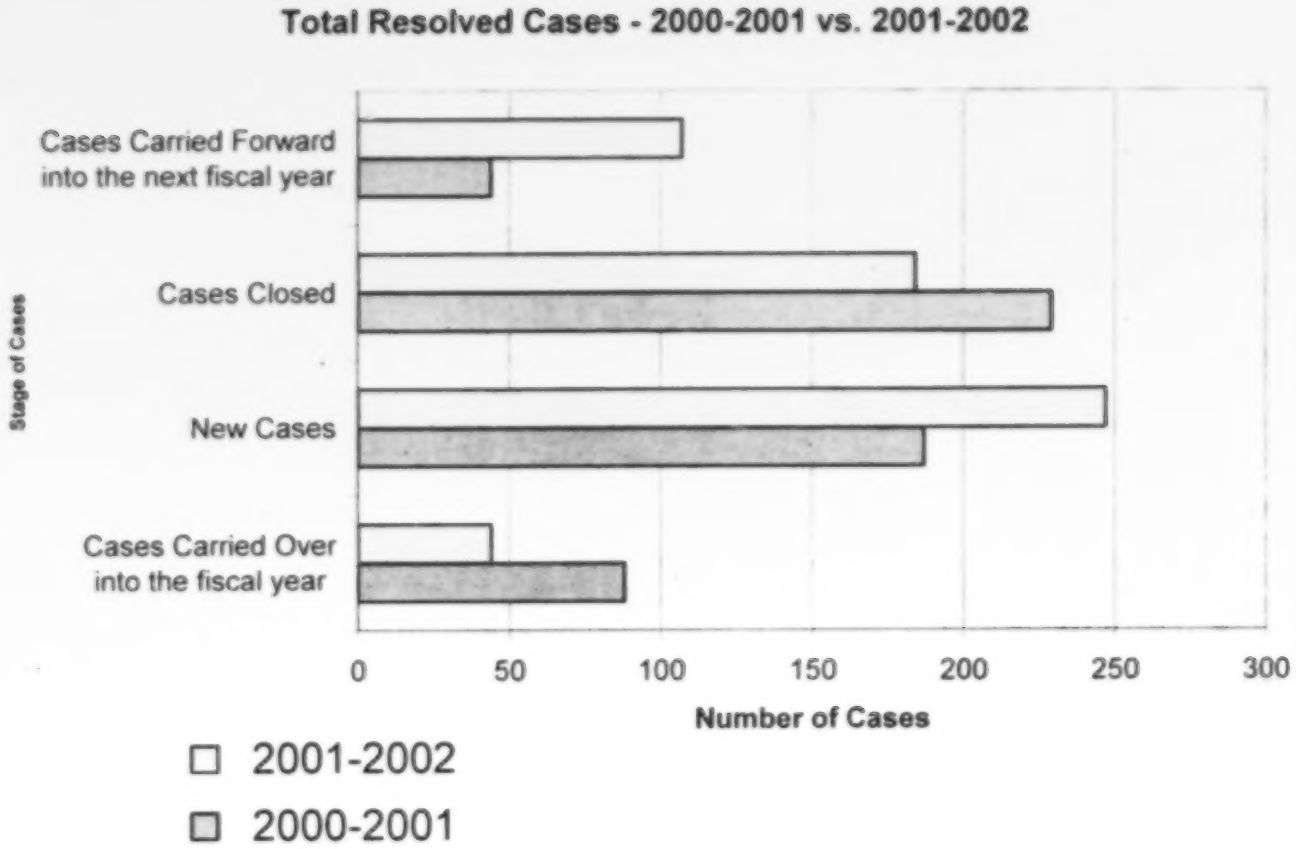
Case Type	No. of Unresolved Cases Carried Forward into 01-02 Fiscal Year	No. of New Cases Received in 01-02 Fiscal Year	No. of Cases Resolved in 01-02 Fiscal Year by Decision of the Tribunal	No. of Cases Resolved in 01-02 Fiscal Year by Tribunal Approved Settlements	No. of Cases Closed in 01-02 Fiscal Year by Other Means*	No. of Cases Carried Forward into 02-03 Fiscal Year	No. of Hearing Days Held in 01-02 Fiscal Year**	No. of Tribunal Days Held on Other Matters in 01-02 Fiscal Year***	No. of Tribunal Days Held on ADR in 01-02 Fiscal Year
NIAGARA ESCARPMENT PLANNING AND DEVELOPMENT ACT									
Development Permit Appeals	8	65	25	0	30	18	17	4	14
Plan Amendment Applications	1	1	1	0	0	1	5	0	0
Niagara Escarpment Plan Review Hearing	1	0	1	0	0	0	23	0	0
CONSOLIDATED HEARINGS ACT									
Applications	3	1	1	0	0	3	3	0	3
ENVIRONMENTAL BILL OF RIGHTS, 1993*									
Leave to Appeal Applications	0	36	21	0	14	1	0	0	0
Total	44	247	70	9	105	107	150	58	34

* Resolved by other means include: withdrawal by applicant/appellant; case abandoned; settlement reached after mediation, etc.

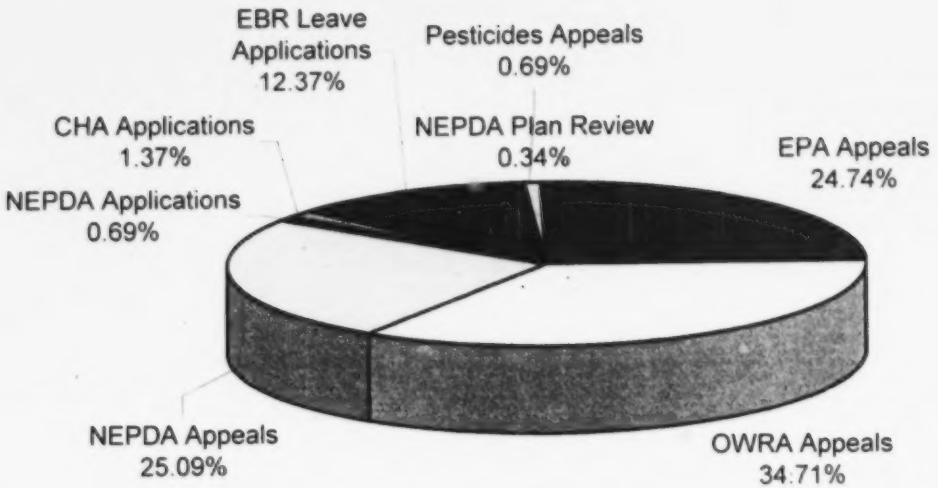
** Hearing days held include preliminary hearings and hearings.

*** Other matters may include: Tribunal days held for the hearing of motions; stay applications; pre-hearing conferences, etc.

**** It is the Tribunal's practice to hold written hearings in these matters.


Total Resolved Cases - 2000-2001 vs. 2001-2002
Cases Carried Forward into the next fiscal year
Cases Closed
New Cases
Cases Carried Over into the fiscal year
Stage of Cases
0
50
100
150
200
250
300
Number of Cases
2001-2002
2000-2001

Total Cases in 2001-2002 by Case Type



Note: There were no applications referred under the *Environmental Protection Act*, the *Ontario Water Resources Act* and the *Environmental Assessment Act*.

Summaries of Selected Decisions

Environmental Bill of Rights, 1993

Niddery *v.* Director, Ministry of the Environment

An application for leave to appeal under the *Environmental Bill of Rights, 1993* was filed in October 2001, in respect of a renewal of a Permit to Take Water ("PTTW") issued to Mark Rich Homes, Ltd. in the Township of Severn. The PTTW was for the seasonal irrigation of golf greens at the Hawk Ridge Golf & Country Club. The PTTW allowed for the taking of a maximum of 3,028 litres per minute, or 1,892,700 litres per ten hour day for a maximum of 60 days per year from Silver Creek. The renewed permit was issued for a period of five years.

A number of grounds were raised by the Applicant for leave to appeal. The Applicant argued that the Ministry of the Environment ("Ministry") did not have, nor consider, baseline data for Silver Creek and therefore was not in a position to monitor the PTTW or enforce its terms. Also argued was that the Ministry did not take into consideration the impact of the reduced water flow on water quality standards and the cumulative effect relating to discharges of leachates from a nearby landfill and trailer park. Lastly, the Applicant argued that the Ministry had not considered or assessed the harm to brook trout in the creek.

Issue: Should leave to appeal be granted?

Decision:

The application for leave to appeal was dismissed. The onus was on the Applicant to demonstrate that the Director's decision was unreasonable having regard to the relevant law and government policies and that the Director's decision could result in significant harm to the environment. The Applicant had not discharged that onus. The Tribunal was satisfied that the decision to issue the PTTW was reasonable and that no significant harm to the environment would result. The Tribunal noted that there was a ten year history of operation with the original PTTW in which no problems had been noted. In addition, the intake for the taking was above low water levels and could not be used when levels dropped. Moreover, Ontario Low Water Response Plan would automatically reduce the amount of the taking when low precipitation occurred. The Applicant had provided no evidence that leachate was reaching the creek nor that there were any inputs from other developments. As for the brook trout, the Tribunal noted the ten year history of the previous water taking and the absence of any evidence that the fish had been affected.

Released: November 27, 2001 (Case No.: 01-115)

Niagara Escarpment Planning and Development Act

Escarpment Link- Niagara Escarpment Plan Amendment No. 71

On August 9, 1990, the Minister of the Environment informed the Niagara Escarpment Commission ("NEC") of the initiation of the expansion of the Niagara Escarpment Planning Area (the "Planning Area") by means of an amendment to an order issued under subsection 3(1) of the *Niagara Escarpment Planning and Development Act* (the "*NEPDA*").

Two areas were covered by the Minister's amendment. One, the "Kolapore Uplands", an area of publicly owned land, was added to the Niagara Escarpment Plan (the "Plan") through a Plan Amendment in 1994. The other, comprising the subject lands of this matter, is known as the "Escarpment Link". These lands encompass approximately 2,280 ha within the Region of Halton (City of Burlington) and the new City of Hamilton (formerly Region of Hamilton-Wentworth), including lands in the former Towns of Dundas and Flamborough, and in the City of Hamilton.

On August 16, 1990, Ontario Regulation 507/90 was approved, thereby amending certain paragraphs of the Schedule to Regulation 684, R.R.O. 1980, and expanding the Planning Area. On December 12, 1990, a resolution was passed by the Ontario Legislative Assembly, which approved the Minister's amendment to the order, referred to in paragraph one, as required under subsection 3(3) of the *NEPDA*.

On May 18, 2000, the NEC issued a staff report intended to serve as the basis for Amendment 71, adding the "Escarpment Link" lands to the Plan.

The NEC subsequently began consultation with the general public, landowners and municipalities, and appointed a Hearing Officer on May 7, 2001. The Hearing Officer was appointed to hear representations concerning the proposed amendments to the Plan. The hearing was advertised and several preliminary hearings were held to add parties, participants and presenters.

In October 2001, a number of property owners within the proposed amendment area expressed their opinion that the NEC had not met the requirements of subsection 3(2) of the *NEPDA* and therefore the Hearing Officer did not have the authority to proceed with the hearing. A motion to challenge the jurisdiction of the Hearing Officer was scheduled for January 7, 2002.

The substantive grounds for the motion were:

- The required investigations/surveys pursuant to section 3(2) of the *NEPDA* had not been carried out as directed;

- In the alternative, the statutory two-year limitation from the date of the Minister's Order, by which date the investigations/surveys were required to have been completed pursuant to section 3(2) of the *NEPDA*, has expired.

Issue: Did the Hearing Officer have the jurisdiction to proceed with the hearing to consider the proposed amendment?

Decision: The Motion was denied. The Hearing Officer first determined that he had the authority to decide whether the amendment proposed by the NEC had been prepared according to the provisions of the *NEPDA*.

Next the Hearing Officer considered the proposition advanced by the Moving Parties that subsection 3(2) of the *NEPDA* imposes the same statutory preconditions on the NEC today, just as it did before the Plan was enacted. These preconditions arise if the NEC proposes an amendment to the Plan that brings lands into the purview of the Plan after they have first been added to the Planning Area by means of an amendment that enlarges the boundaries of the Area. The Hearing Officer reviewed the history of the legislative changes and determined that the extensive preconditions set out for the initial establishment of the Plan do not apply to subsequent Plan amendments. The Hearing Officer determined that the hearing on the amendment should continue as the NEC had followed the prerequisite statutory procedures.

Released: January 29, 2002 (Case No.: 01-010)

An application for judicial review was issued by the moving parties. The judicial review is pending. The Hearing Officer is continuing with the hearing.

Janzen *v.* Niagara Escarpment Commission

This was an appeal from a decision of the Niagara Escarpment Commission ("NEC") to issue a development permit to construct a one-story home within the Town of Niagara on the Lake. A neighbour objected to the permit on the grounds that the home would block the neighbour's view of Lake Ontario. The NEC wrote to the Niagara Escarpment Hearing Office and asked for a ruling pursuant to section 25(8.2) of the *Niagara Escarpment Planning and Development Act* to determine if the appeal "does not disclose a planning justification for the appeal, is not in the public interest, is without merit, is frivolous, or is made for the purpose of delay". The Hearing Officer wrote to the parties asking for their submissions and none were received.

Issue: Was the appeal without planning justification and therefore should be dismissed?

Decision:

The appeal was dismissed. The Hearing Officer was satisfied that the proposed development and its proposed height were reasonable. As the obstruction of the view was the only ground of appeal put forward, the Hearing Officer was satisfied that there was no planning justification for the appeal and that holding a hearing would not be in the public interest.

Released: January 18, 2002 (Case 01-125)

Ontario Water Resources Act

City of Hamilton v. Director, Ministry of the Environment

In February of 2001, the Director issued an order pursuant to subsection 62(1) of the *Ontario Water Resources Act* directing the City of Hamilton ("City") to access and operate a private communal well and water distribution system owned and operated previously by a co-operative. The co-operative had provided drinking water to the 26 residential units for over 40 years through its own water works. The co-operative had been dissolved for failure to file financial statements and its assets had been forfeited to the Crown (Province of Ontario) under relevant legislation. The City appealed the order on the basis that the water works did not represent a danger to the health and safety of any person. In addition, the City took the position that the Director did not have the authority to issue an order when the water works was owned by the Province. Lastly, even if the Director had such authority, the Director should not have exercised his discretion when the Province had the financial and technical resources to operate the system and therefore it was not in the public interest that the City be ordered to control and operate the system.

Issue: Should the City of Hamilton be ordered to control and operate the water system?

Decision: Appeal allowed.

The Tribunal found that there was a danger to the health and safety of the public. Periodic spikes left the water system in constant danger of being in an immediate risk of impairment. The Tribunal also determined that the Director has the authority to compel a municipality to operate and take control of a water system even though the Crown may own the water works. On the issue of whether or not the Director's discretion had been exercised properly, the Tribunal was of the opinion that the real owner of the water works (the Crown) should have been approached first by the Director to address the problem. This had not been done and the burden had been unfairly first put to the City.

Released: August 16, 2001 (Case No.: 00-182)

Dillon *et al.* v. Director, Ministry of the Environment

In August 2000, OMYA (Canada) Inc. was granted a Permit To Take Water ("PTTW") under the provisions of the *Ontario Water Resources Act* ("*OWRA*"). The location of the taking is the Tay River in the Township of Bathurst, Burgess and Sherbrooke. The PTTW was for a maximum of 1,483 cubic metres per day prior to January 1, 2004 and for a maximum of 4,500 cubic metres per day after January 1, 2004. There were 27 conditions attached to the PTTW. The PTTW was described as a phased PTTW because it contemplated an increased amount of water taking after January 2004.

The right to appeal the Director's decision to issue the PTTW was granted under the provisions of the *Environmental Bill of Rights, 1993* to a number of residents and local interests.

Issue: Should the appeal be allowed?

Decision:

The Tribunal allowed the appeal in part. The PTTW was amended to allow for the previously granted maximum taking of 1,483 cubic metres per day, but removed the higher volume which had been granted by the Director to commence after January 1, 2004. The PTTW at the lower rate of taking was extended to January 1, 2008. The Tribunal amended the conditions attached to the PTTW. The principle of a phased-in PTTW as previously granted by the Director was rejected by the Tribunal.

The Tribunal considered the requirement for an ecosystem approach in evaluating the potential impacts of the water taking, and the need for more information regarding the higher amount of the water taking awarded to OMYA after January 2004.

The Tribunal was not satisfied that the Director had completely evaluated the impact on the Tay River watershed using an ecosystem approach with respect to the increased water taking. The Tribunal was of the view that the Director's interpretation of what constituted an ecosystem was too narrow and should include at a minimum the river's watershed. The Tribunal ruled that the principles set forth in the Statement of Environmental Values issued by the Ministry must be considered as required by the relevant regulations when making decisions about instruments such as a PTTW. This includes using the ecosystem approach in evaluating impacts and considering the cumulative impacts of other PTTW's affecting the same watershed.

Released: February 19, 2002 (Case Nos.: 00-119, 00-120, 00-121, 00-122, 00-123, 00-124)

Plachata v. Director, Ministry of the Environment

This was an appeal from a Provincial Officer's Order issued November 20, 2001, subsequently confirmed by the Director, Ministry of the Environment directing the Appellant to apply for a Certificate of Approval ("CofA") and a Permit to Take Water ("PTTW"); and to otherwise comply with the regulations respecting the provision of water to persons living in the Appellant's trailer park, located in the County of Hastings. The trailer park had a history of being unable to provide potable water to the residents.

The Appellant owned and operated a trailer park in which 100 persons resided in 49 privately owned mobile trailers. At issue in the appeal was whether or not the trailer park's water works required a CofA, whether a PTTW was required. In the interim, the City of Quinte West had been ordered by the Director to operate the water works pending the Appellant's application for a CofA. The Appellant invited the Tribunal to order the closure of the trailer park as the Appellant did not have the funds needed to comply with the Director's Order.

Issue: Was the water park subject to regulation under the provisions of the *Ontario Water Resources Act* and, if so, to what extent?

Decision:

The appeal was dismissed. The Tribunal was satisfied that the Appellant owned and operated a "water works" as defined under the *Ontario Water Resources Act*, and as such were required to have a CofA to operate. The evidence at the hearing established that the water being taken for the water works exceeded the threshold of 50,000 litres per day and therefore required a PTTW. The Appellant was obligated to operate the water works with a certified operator in accordance with O. Reg. 435/93.

Related: August 3, 2001 (Case No.: 00-156)

Township of Tiny v. Director, Ministry of the Environment (Lafontaine Water Works)

In December 2000, the Ministry of the Environment ("Ministry") issued a Provincial Officer's Order against the owners and operators of the Lafontaine Water Works, a privately owned and operated water supply and distribution system servicing 150 homes in the Township of Tiny ("Township"). The Order noted a number of deficiencies including the failure to provide disinfection, failure to sample, and, failure to have a licensed operator. In January 2001, the owners of the Lafontaine water works advised the Ministry that they would not be able to comply with the Order. As a result, the Ministry determined that this failure to comply would result in unsafe drinking water for the residents. The Ministry then directed the Township to take over the water works pursuant to subsection 62(11) of the *Ontario Water Resources Act*. The Township appealed.

In the interim, the Township took over the water works as per the Order of the Ministry. Discussions between the Township and the Ministry resulted in a proposal that the Lafontaine water works be combined with an existing Township water works nearby. This proposal was acceptable to the Ministry but required further revisions to the Order and different time lines for compliance. The parties arrived at a settlement but required the approval of the Tribunal.

Issue: Should the settlement be approved by the Tribunal and a revised Order issued in accordance with the settlement?

Decision:

The Tribunal accepted terms of the proposal and issued a revised Order incorporating the terms of the settlement.

The Tribunal noted that the Township had complied with the Order and had taken over the Lafontaine water works. The Tribunal was satisfied that the proposal did not compromise the safety of the water and was expected to result in increased efficiencies in the operation of the municipal water systems. The Township's appeal was withdrawn and a revised Order issued.

Released: February 7, 2002 (Case No.: 00-175)

Pesticides Act

Bobby Lawn Care and Lee-Lee Lawns v. Director, Ministry of the Environment

Bobby Lawn Care and Lee-Lee Lawns were two businesses which applied pesticides to residential and commercial properties. The Director affirmed Provincial Officer's Orders against both in June and July of 2001 and ordered them to discontinue using the signs they were placing on residential lawns indicating that a pesticide had been applied. The Director was of the opinion that these signs did not comply with the regulations under the *Pesticides Act*. Subsequent to appeals having been filed by Bobby Lawn Care and Lee-Lee Lawns, the Director revoked the Orders made against them. This was not acceptable to the Appellants as the revocation was conditional. The condition was that the Appellants could continue to use their signs only for the 2001 season. The Appellants objected to the revocation of the Order and wished to have their appeal heard.

Issue: Should the appeal continue even though the Order had been revoked?

Decision: Motion denied, appeal dismissed.

The issue to be considered, as set out in Rule 31 of the Tribunal's Rules of Practice, are whether the Tribunal has reason to believe that the revocation will adversely affect the interests of any party or is contrary to the public interest. On the issue of adverse interest, it was noted that the Director had indicated that it was not going to take any action against the Appellants for the use of their signs in the 2001 season. As the Appellants were not subject to any prosecution, they did not meet the first test. They would not suffer any consequences.

The Tribunal then considered whether or not the revocation was contrary to the public interest. The Tribunal was satisfied that the Director had not fettered his discretion, as a result of the revocation, to make further orders or decisions which might be needed to protect the environment. The Appellants ultimately wanted the Tribunal to have the Director approve the use of their signs. As the Tribunal did not have the authority to make an order that the Director approve the use of the Appellants' signs, the appeal would have served no useful purpose.

Released: September 13, 2001 (Case Nos.: 01-037, 01-050)

Report on Performance Measures
Fiscal Year 2001-2002

In fiscal year 2001-2002, the Tribunal adopted seven goals as critical to effective and efficient performance and service quality in its core businesses of Outreach, Alternative Dispute Resolution, Staff Processing of Hearings, and Hearings and Decision Making.

In this fiscal year, the Tribunal met or exceeded its performance measures in each of its seven targeted areas. For Key Performance Goals and Objectives for fiscal year 2002-2003 refer to Appendix D.

Commitment #1: Website Access

"The Tribunal will use its website to communicate with its customers."

The Tribunal considers its website to be its number one communication channel. The public has embraced the website as the primary way to access information about the Tribunal and its processes. From April 1, 2001 to March 31, 2002, the Tribunal had a total of 163,830 visitors to its site and a total of 599,989 "hits" on specific pages in the site. Eight decisions of either of the Tribunal were downloaded over 1,000 times. Other documents on the website, such as environmental legislation or copies of the Tribunal's brochures, were also downloaded several thousand times. During the year there were over 10,700 separate downloads of documents from our website. For a list of the most popular downloads, refer to Appendix E.

In last year's Annual Report, the Tribunal reported that the total number of visitors since the website's inception in June 1998 was 180,000. As reported above, this fiscal year there was a total of 163,830 visitors. This is a significant increase for a one year period. It may be due to the increasing percentage of the public who now has access to the Internet. Another factor may be that the Tribunal used the Internet to conduct the Niagara Escarpment Plan Review Hearing which saw high peaks of visitors between March and November 2001. The Tribunal also implemented a new website tracking system called "Webtrends" to track its website statistics.

The staff update the website four to five times weekly. With the exception of a few hours each month for website maintenance, the website is available at all times. If the gateway for the Ontario Government were not in service, the Tribunal's website would not be operational.

In November 2001, the Tribunal met one of its commitments by posting proposed revised "Rules of Practice, Practice Directions and Guidelines" on the website for public consultation.

The Tribunal will continue to use its website to provide copies of decisions, the Tribunal's Rules of Practice and Guidelines and relevant statutes, receive stakeholder feedback, and notify the public of the status of ongoing hearings. The Tribunal's website will continue to be updated daily with hearing-related information.

Commitment 60 Public Education and Information Sessions

"Public Education and Information Sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process."

The Tribunal undertook to offer these services to interested groups and each new pending engagement where the Tribunal's profile can be determined. The Tribunal conducted four pending engagements this year. A list of these presentations is attached in Appendix G.

Since the inception of offering this service in 1998, the requests by organizations to host a presentation on the general overview of the Tribunal have declined. The Tribunal did not conduct any Public Information Sessions for specific hearings in this fiscal year. The Tribunal has made this a priority for the next fiscal year. It is critical to public participation and awareness to offer the services of public information sessions prior to the commencement of the main hearing of evidence in hearings that are of interest to the general public. These sessions educate the public on how they can participate in the hearing process. The Tribunal has committed to conducting Public Information Sessions prior to the commencement of hearings for the appeals of the Certificates of Approval for the municipal water works hearings next fiscal year.

Commitment 61 ADR Services

"The Tribunal will offer ADR services to all appeal cases, and to request a application case, prior to the commencement of the hearing."

ADR services are available to all parties to matters which are heard by the Tribunal. The Tribunal formally offers these services in every appeal and upon request to all applications in order to encourage parties to resolve their issues. In this fiscal year, parties participated in ADR sessions during the hearing process in 15 cases compared to 19 and 16 cases, respectively, in the last two fiscal years. Of the 15 cases where ADR services were provided, 7 cases were resolved and did not result in a full hearing of evidence.

Senior staff and Tribunal members who conducted ADR sessions were satisfied through an unwritten survey.

All participants in each ADR session were sent a questionnaire which included questions on their level of satisfaction with the ADR process and the Tribunal's involvement. Of the 15 responses received, the Tribunal scored 90% in overall satisfaction with the ADR process, which exceeded the established target of 75%.

The Tribunal monitored the cost of the components of the ADR sessions. These costs included the cost of a senior staff member/Tribunal member at a calculated per diem rate, and any out of pocket expenses such as charges associated with the conversion of the teleconference to travel expenses if the session was held in person. The average cost of an ADR session was $3,000.00.

Commitment #4: Improve Timeliness in Scheduling Hearings

"The Tribunal will improve the timeliness in scheduling hearings."

The Tribunal adopted a 30 calendar day timeliness standard to issue a Notice of Hearing, starting on the day on which the appeal/application is received. The Tribunal met the timeframe as the average time to issue the Notice of Hearing from the date of receipt was 17 days (same as last fiscal year).

The staff exceeded the seven calendar day expectation to schedule an appeal/application after the parties provided all necessary documentation. This year the average was five calendar days compared to seven calendar days last fiscal year. This is the third consecutive year in which the staff has met these standards. It is also significant to note that, this year, the staff also had the added responsibility of organizing and administering the process for the Niagara Escarpment Plan Review Hearing without the help of additional staff. This was a significant undertaking where every step had to be well thought out to meet the tight deadlines established by the Hearing Officers for filing of electronic submissions.

Commitment #5: Electronic Service Delivery (ESD)

"The Tribunal will continue its commitment to ESD."

The Tribunal is reviewing its administrative practices to modify processes for the implementation of offering the services of filing appeals/applications and written submissions by using the Internet. In this fiscal year, the Tribunal established practices for accepting the written submissions for the Niagara Escarpment Plan Review Hearing.

The Tribunal, in its role as the Niagara Escarpment Hearing Office, managed the receipt of written submissions during the Niagara Escarpment Plan Review Hearing. The Tribunal dedicated a portion of its website to allow public access to all information filed in the hearing. This website also included background documents and electronic forms to file submissions. There was some opposition to the requirement to file documents electronically. The Hearing Officers allowed those who did not want to file electronically to do so in paper format. Very few participants filed their submissions in that manner.

Upon release of the Hearing Officers' written recommendations to the Minister of Natural Resources, all participants were sent a questionnaire on the process. Of the 104 participants, 37 completed the questionnaire and returned it. In 26 of the 37 responses, participants visited the website to obtain directions on the written phase of the hearing. In 25 out of 37 responses, participants visited the website to view other participants' submissions. But only 19 of the 37 participants who responded found the electronic filing requirements helpful or somewhat helpful in their participation. Out of 35 respondents who answered this question, 31 were satisfied or somewhat satisfied, overall, with the conduct of the hearing process. The general comments in responses were positive, on the whole, but highlighted that not all of the general public has access or the knowledge to use the Internet to participate in hearings.

This electronic initiative assisted the staff significantly in preparing for the Government's target of having services electronically available by April 1, 2003.

Commitment #6: Courtesy

"Everyone participating in a hearing will be treated with courtesy and respect by Tribunal Members."

Questionnaires were developed and given (along with a self-addressed stamped envelope) to every party and every representative of a party and every participant at a hearing during this fiscal year. These questionnaires continue to be used for a variety of purposes in order to improve the hearing processes. The questionnaires included questions related explicitly to the perception of the parties and their representatives concerning the courtesy of Tribunal members during the hearing process. Of the 68 responses received, the Tribunal scored 100% relating to member courtesy.

The Tribunal has a formal policy and process for complaints received from the public. The Tribunal did not receive any formal complaint this fiscal year about the conduct of members at Hearings.

Commitment #7: Cost of Hearings

"The Tribunal will monitor the cost of Hearings to ensure the maximum efficient use of public funds."

The Tribunal tracked the cost of hearings conducted by Tribunal members.

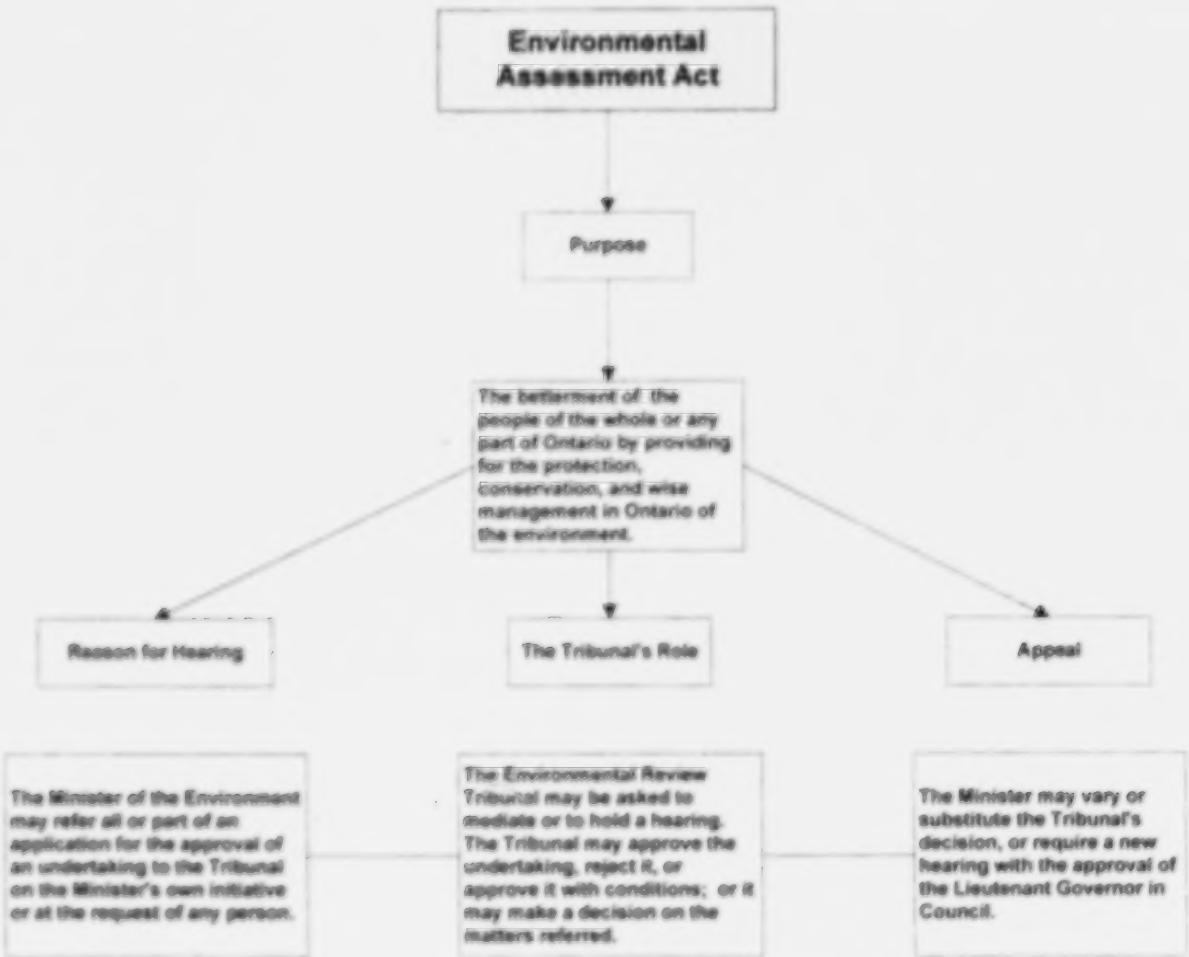
The budget components of hearings were the cost of members, calculated at the actual per diem rate paid to part-time members, or the calculated per diem rate for full-time Members, plus expenses such as travel, accommodation and meal charges and, if applicable, the rental cost of the hearing room, advertising, court reporters or interpreters.

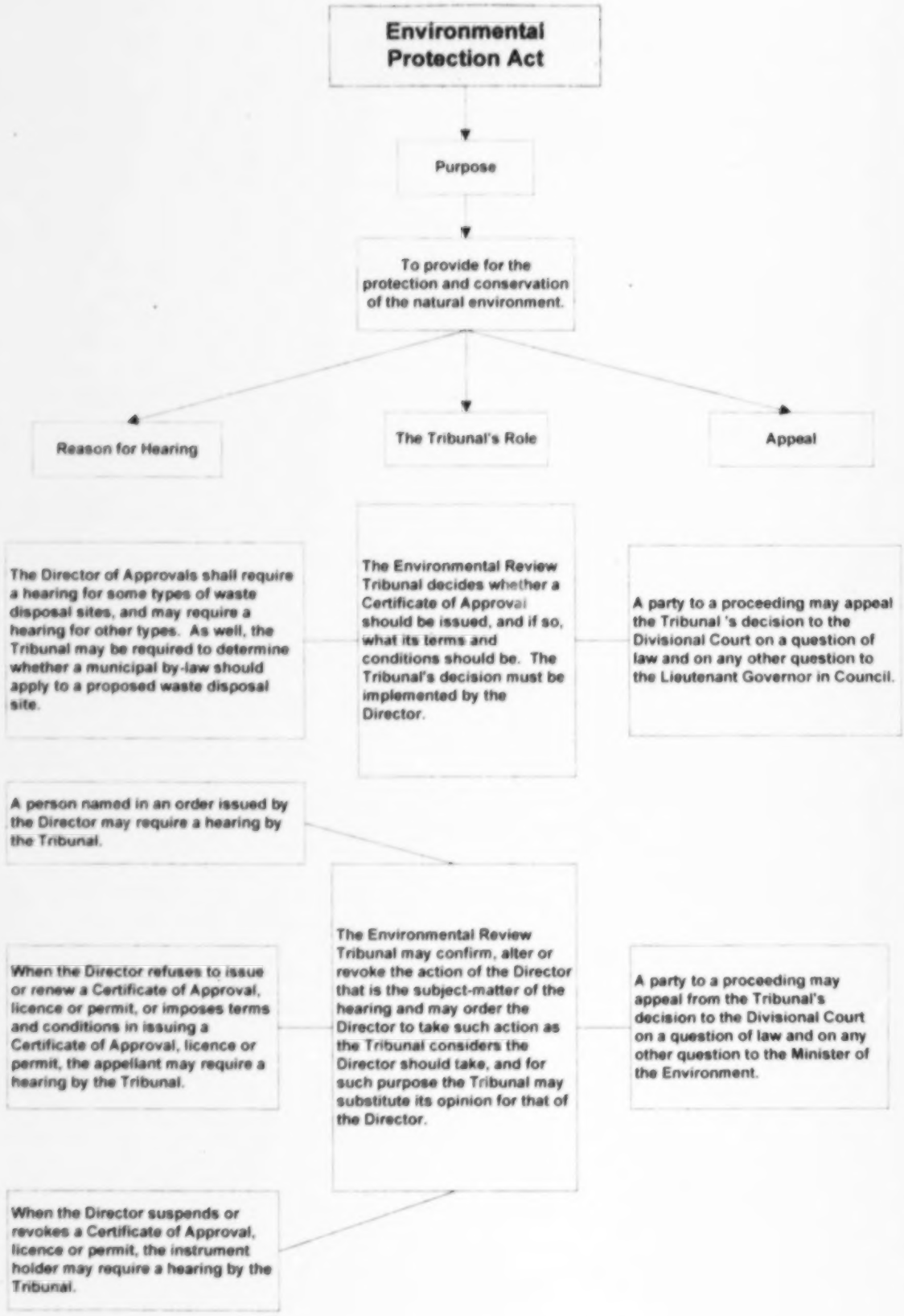
Only hearings that were completed in fiscal year 2001-2002 and to which members devoted hearing time were factored into the calculation. Thus, hearings that either began in a previous fiscal year, (in which case, the time spent and the expenses incurred were obtained from the records of previous fiscal years) and ended in fiscal year 2001-2002, or hearings that both began and ended in fiscal year 2001-2002 were used for this calculation. Hearings which began in this fiscal year but which remained open on April 1, 2002 were not used in the calculation, but their cost results will be included in the fiscal year in which they are completed.

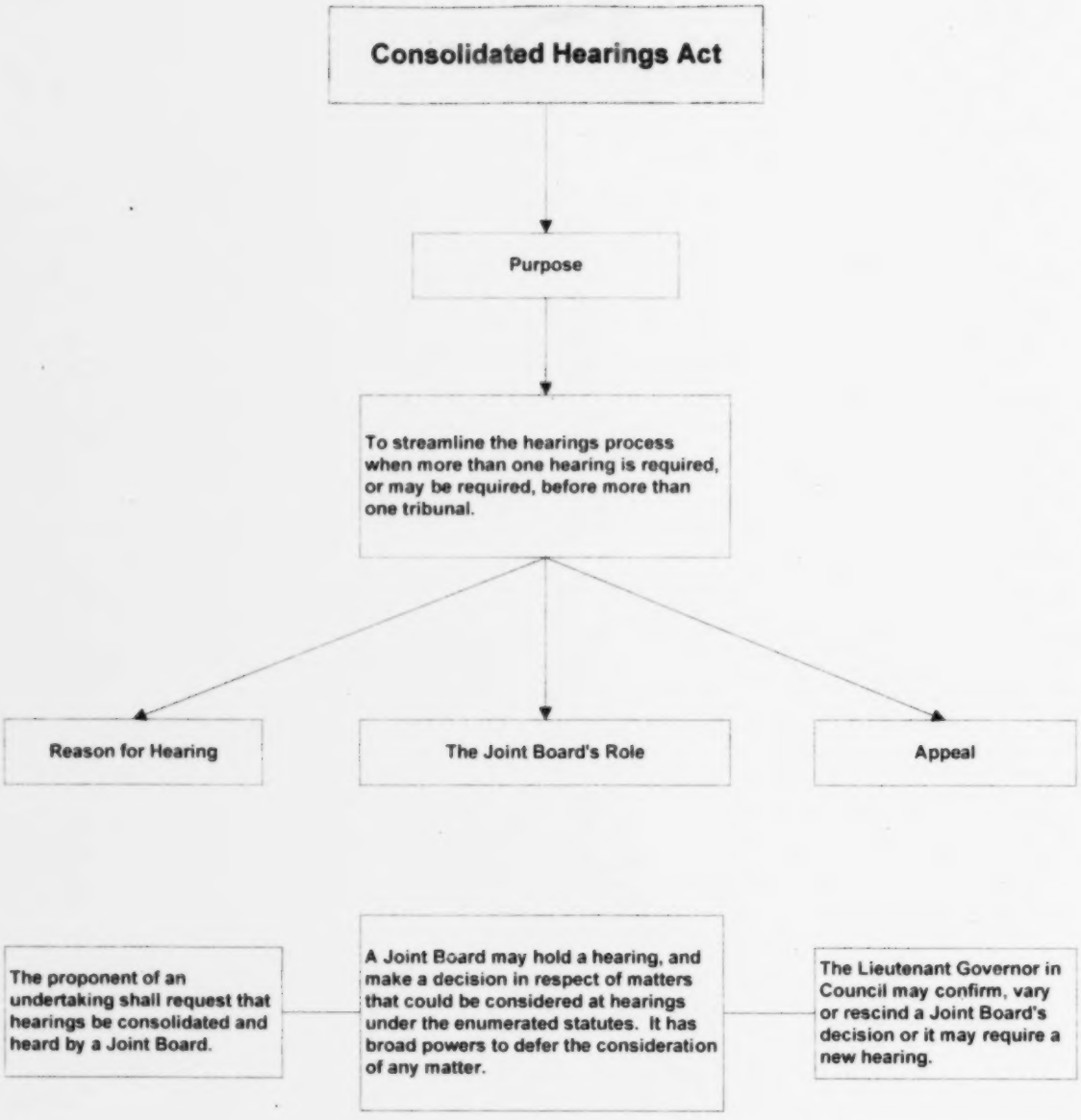
The average cost of a hearing completed in fiscal year 2001-2002 was $4,067.72 compared to $1,375.86 for fiscal year 2000-2001. This change was due to the cost of Niagara Escarpment Plan Review and Dillon et al v. MOE, both unusually lengthy hearings.

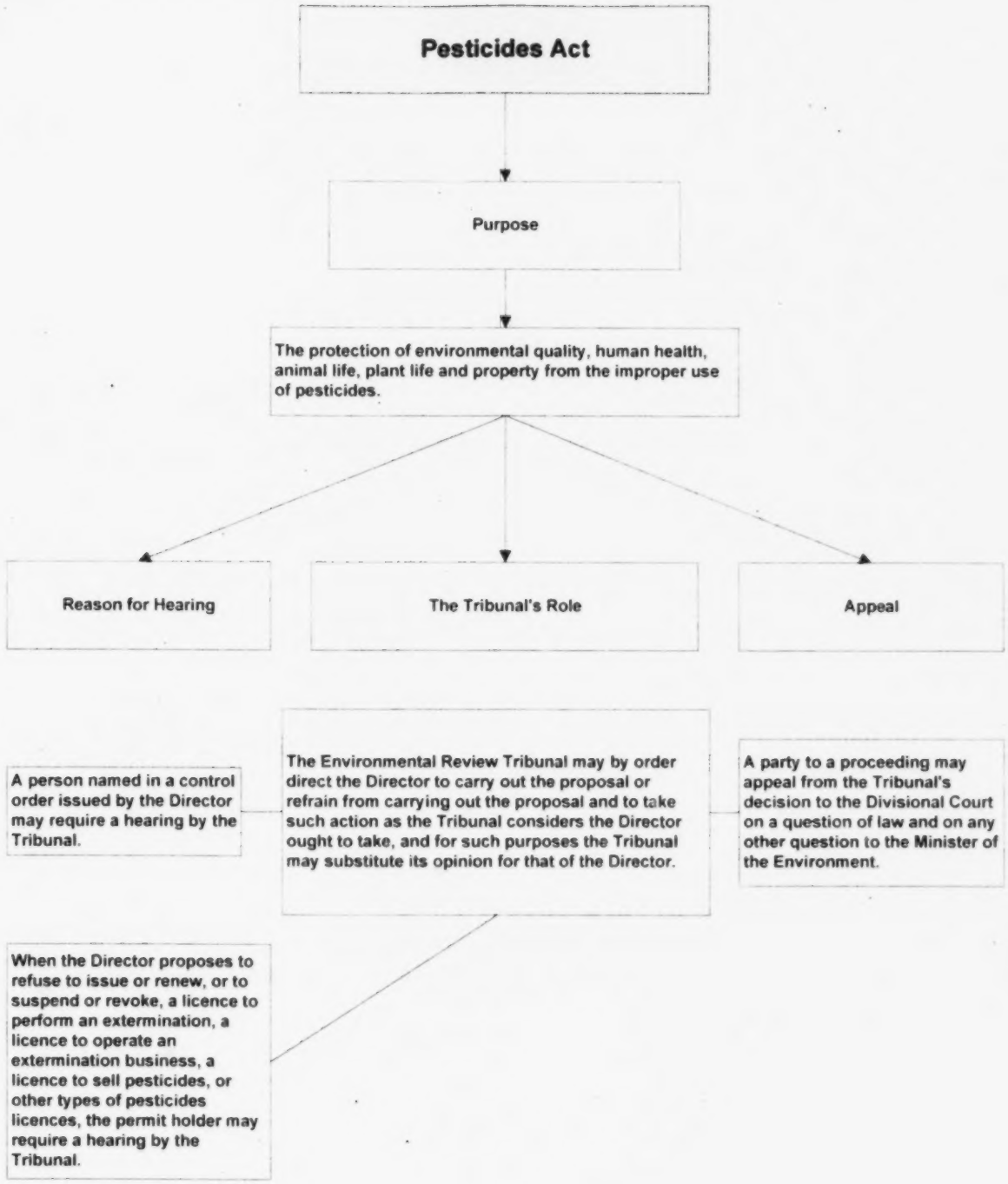
Appendix A

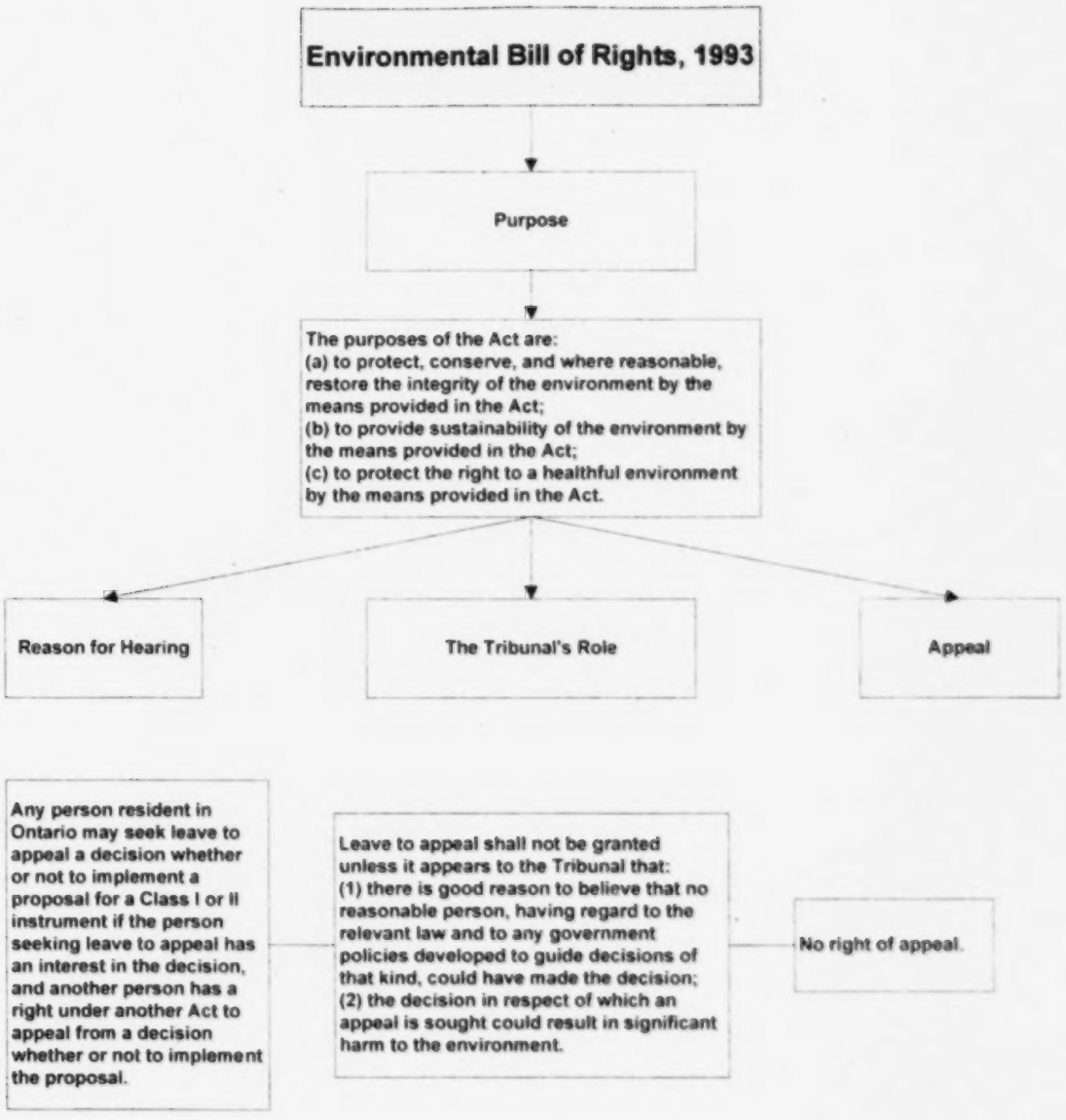
Overview of Relevant Legislation

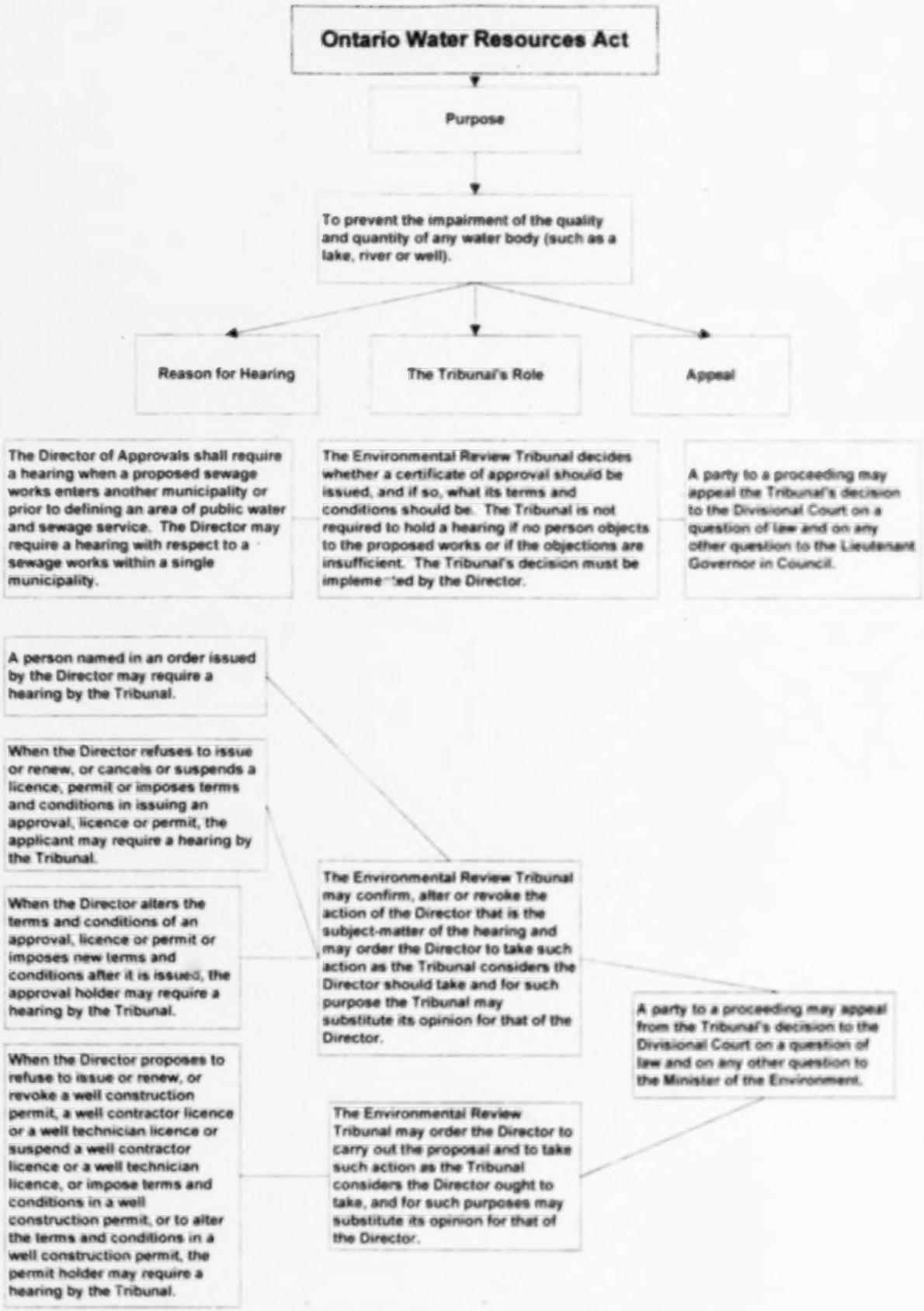

Environmental Assessment Act
Purpose
The betterment of the people of the whole or any part of Ontario by providing for the protection, conservation, and wise management in Ontario of the environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Minister of the Environment may refer all or part of an application for the approval of an undertaking to the Tribunal on the Minister's own initiative or at the request of any person.
The Environmental Review Tribunal may be asked to mediate or to hold a hearing. The Tribunal may approve the undertaking, reject it, or approve it with conditions; or it may make a decision on the matters referred.
The Minister may vary or substitute the Tribunal's decision, or require a new hearing with the approval of the Lieutenant Governor in Council.

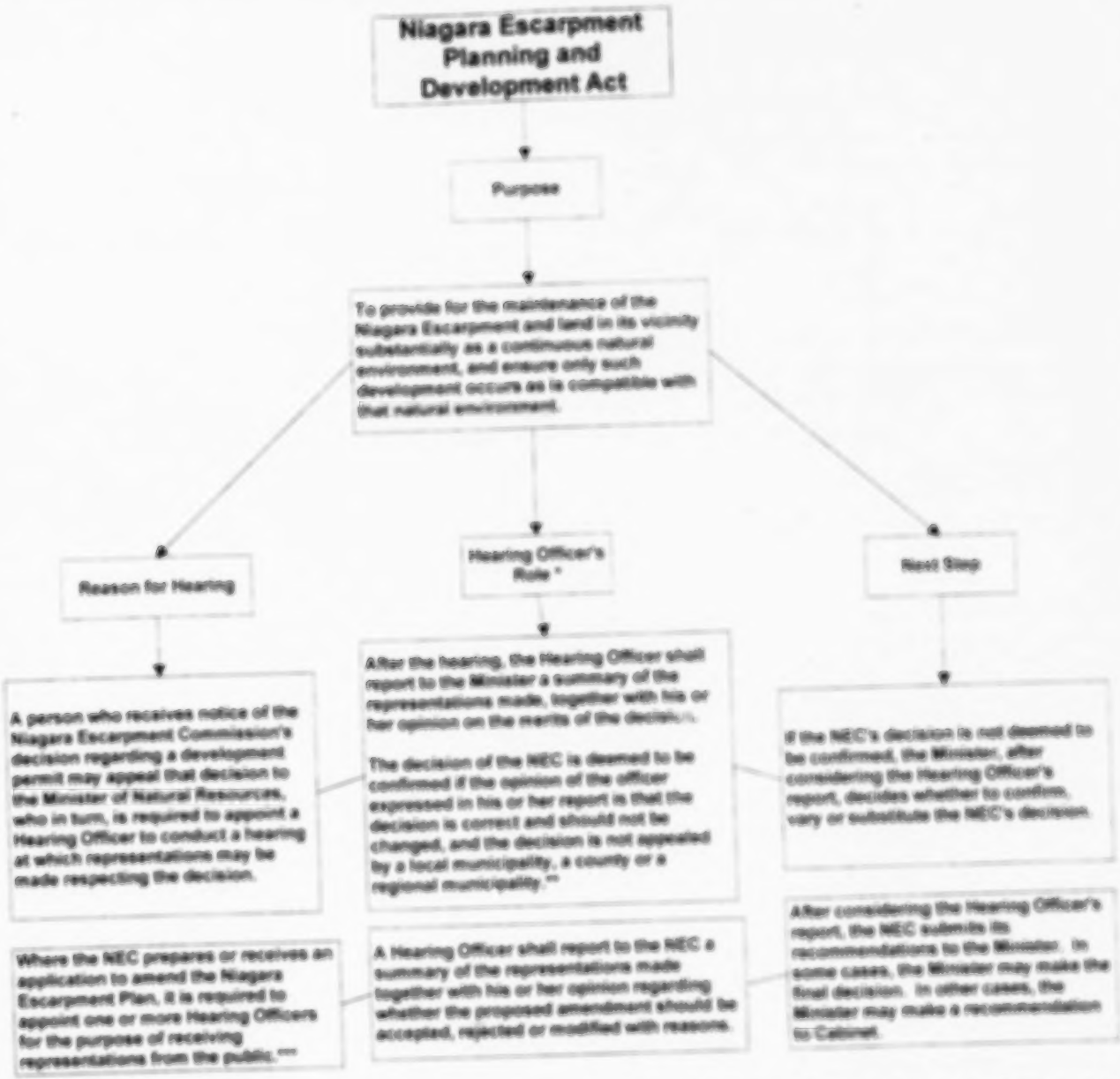

Environmental Protection Act
Purpose
To provide for the protection and conservation of the natural environment.
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing for some types of waste disposal sites, and may require a hearing for other types. As well, the Tribunal may be required to determine whether a municipal by-law should apply to a proposed waste disposal site.
The Environmental Review Tribunal decides whether a Certificate of Approval should be issued, and if so, what its terms and conditions should be. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal 's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew a Certificate of Approval, licence or permit, or imposes terms and conditions in issuing a Certificate of Approval, licence or permit, the appellant may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take, and for such purpose the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director suspends or revokes a Certificate of Approval, licence or permit, the instrument holder may require a hearing by the Tribunal.


Consolidated Hearings Act
Purpose
To streamline the hearings process when more than one hearing is required, or may be required, before more than one tribunal.
Reason for Hearing
The Joint Board's Role
Appeal
The proponent of an undertaking shall request that hearings be consolidated and heard by a Joint Board.
A Joint Board may hold a hearing, and make a decision in respect of matters that could be considered at hearings under the enumerated statutes. It has broad powers to defer the consideration of any matter.
The Lieutenant Governor in Council may confirm, vary or rescind a Joint Board's decision or it may require a new hearing.


Pesticides Act
Purpose
The protection of environmental quality, human health, animal life, plant life and property from the improper use of pesticides.
Reason for Hearing
The Tribunal's Role
Appeal
A person named in a control order issued by the Director may require a hearing by the Tribunal.
The Environmental Review Tribunal may by order direct the Director to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes the Tribunal may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.
When the Director proposes to refuse to issue or renew, or to suspend or revoke, a licence to perform an extermination, a licence to operate an extermination business, a licence to sell pesticides, or other types of pesticides licences, the permit holder may require a hearing by the Tribunal.


Environmental Bill of Rights, 1993
Purpose
The purposes of the Act are:
(a) to protect, conserve, and where reasonable, restore the integrity of the environment by the means provided in the Act;
(b) to provide sustainability of the environment by the means provided in the Act;
(c) to protect the right to a healthful environment by the means provided in the Act.
Reason for Hearing
The Tribunal's Role
Appeal
Any person resident in Ontario may seek leave to appeal a decision whether or not to implement a proposal for a Class I or II instrument if the person seeking leave to appeal has an interest in the decision, and another person has a right under another Act to appeal from a decision whether or not to implement the proposal.
Leave to appeal shall not be granted unless it appears to the Tribunal that:
(1) there is good reason to believe that no reasonable person, having regard to the relevant law and to any government policies developed to guide decisions of that kind, could have made the decision;
(2) the decision in respect of which an appeal is sought could result in significant harm to the environment.
No right of appeal.


Ontario Water Resources Act
Purpose
To prevent the impairment of the quality and quantity of any water body (such as a lake, river or well).
Reason for Hearing
The Tribunal's Role
Appeal
The Director of Approvals shall require a hearing when a proposed sewage works enters another municipality or prior to defining an area of public water and sewage service. The Director may require a hearing with respect to a sewage works within a single municipality.
The Environmental Review Tribunal decides whether a certificate of approval should be issued, and if so, what its terms and conditions should be. The Tribunal is not required to hold a hearing if no person objects to the proposed works or if the objections are insufficient. The Tribunal's decision must be implemented by the Director.
A party to a proceeding may appeal the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Lieutenant Governor in Council.
A person named in an order issued by the Director may require a hearing by the Tribunal.
When the Director refuses to issue or renew, or cancels or suspends a licence, permit or imposes terms and conditions in issuing an approval, licence or permit, the applicant may require a hearing by the Tribunal.
When the Director alters the terms and conditions of an approval, licence or permit or imposes new terms and conditions after it is issued, the approval holder may require a hearing by the Tribunal.
When the Director proposes to refuse to issue or renew, or revoke a well construction permit, a well contractor licence or a well technician licence or suspend a well contractor licence or a well technician licence, or impose terms and conditions in a well construction permit, or to alter the terms and conditions in a well construction permit, the permit holder may require a hearing by the Tribunal.
The Environmental Review Tribunal may confirm, alter or revoke the action of the Director that is the subject-matter of the hearing and may order the Director to take such action as the Tribunal considers the Director should take and for such purpose the Tribunal may substitute its opinion for that of the Director.
The Environmental Review Tribunal may order the Director to carry out the proposal and to take such action as the Tribunal considers the Director ought to take, and for such purposes may substitute its opinion for that of the Director.
A party to a proceeding may appeal from the Tribunal's decision to the Divisional Court on a question of law and on any other question to the Minister of the Environment.


Niagara Escarpment Planning and Development Act
Purpose
To provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and ensure only such development occurs as is compatible with that natural environment.
Reason for Hearing
Hearing Officer's Role *
Next Step
A person who receives notice of the Niagara Escarpment Commission's decision regarding a development permit may appeal that decision to the Minister of Natural Resources, who in turn, is required to appoint a Hearing Officer to conduct a hearing at which representations may be made respecting the decision.
After the hearing, the Hearing Officer shall report to the Minister a summary of the representations made, together with his or her opinion on the merits of the decision.
The decision of the NEC is deemed to be confirmed if the opinion of the officer expressed in his or her report is that the decision is correct and should not be changed, and the decision is not appealed by a local municipality, a county or a regional municipality.**
If the NEC's decision is not deemed to be confirmed, the Minister, after considering the Hearing Officer's report, decides whether to confirm, vary or substitute the NEC's decision.
Where the NEC prepares or receives an application to amend the Niagara Escarpment Plan, it is required to appoint one or more Hearing Officers for the purpose of receiving representations from the public.***
A Hearing Officer shall report to the NEC a summary of the representations made together with his or her opinion regarding whether the proposed amendment should be accepted, rejected or modified with reasons.
After considering the Hearing Officer's report, the NEC submits its recommendations to the Minister. In some cases, the Minister may make the final decision. In other cases, the Minister may make a recommendation to Cabinet.

*Members of the Environmental Review Tribunal may be appointed as Hearing Officers under the *Niagara Escarpment Planning and Development Act* ("*NEPDA*") to hear appeals of Niagara Escarpment Commission decisions on development permits and to conduct hearings on applications to amend the Niagara Escarpment Plan.

**Since the proclamation of the *Red Tape Reduction Act, 2000*, S.O. 2000, c. 26 (Bill 119) amendments to the *NEPDA*, deemed confirmations can also occur where the parties have reached a settlement on the conditions of the development permit. The decision of the NEC may be deemed confirmed prior to going to the Minister if (a) the decision was to issue a development permit, (b) the parties who appeared at the hearing have agreed on all of the terms and conditions that should be included in the development permit, and these are set out in the Hearing Officer's report, and (c) it is the Hearing Officer's opinion in the report that the decision to issue the development permit with the agreed terms and conditions would be correct and should not be changed.

***Hearing Officers are normally appointed by the NEC to conduct hearings on proposed Plan amendments only if objections are made to the proposed amendments.

Appendix B

Profile of Tribunal Members

Chair and Full-time Vice-Chairs

Ian McPhail, Q.C., Chair *(appointment expires December 18, 2006)*

- Chair, Environmental Review Tribunal (2001)
- Chair, Alcohol & Gaming Commission of Ontario (2000-2001)
- Director and Vice-Chair, OLCA (1996-2000)
- Acting Chair, Ontario Educational Communications Authority (1999)
- Appointed federal Queen's Counsel (1992)
- Called to the Ontario Bar (1972)
- Private Law Practice in Toronto (1972-1999)
- Vice-President, Toronto Chinese Community Services Association, and the Sino-Canadian Arts Studies Inc.
- Member, Champlain Society, Empire Club of Canada, Cabbagetown Preservation Association, and other community associations

Bill Balfour *(appointment expires May 5, 2005)*

- Appointed as a Vice-Chair in August 2001
- Appointed as a part-time member in 1999
- Received BASc in Civil Engineering and MBA from University of Toronto
- Received OLS (Ontario Land Surveyor) License; received Certificate in Financial Planning from Sheridan College
- Worked in engineering consulting with Marshall Macklin Monaghan from 1965 to 1970
- Worked for Ontario Government (Ministries of Health and Environment) from 1970 to 1989 as Supervisor, Recreational Lakes Program; District Manager for Muskoka, Haliburton and Parry Sound; Coordinator Regional Operations and Laboratories; Director, Approvals and Land Use Planning
- Principal with Gartner Lee Ltd, environmental consultants, from 1989 to 2001

Chris Bradley *(appointment expires February 2, 2005)*

- Appointed as a Vice-Chair in February 2002
- Adjudicator with the Ontario Rental Housing Tribunal (1999-2002)
- Director of Marketing for a Toronto-based aerospace company (1997-1999)
- Vice-Chair Scarborough Board of Education (1994-1997)
- President and owner of a successful health and safety products company specializing in hazardous cleanup projects (1990-1997)
- President of West Hill Community Services (1998 – present)
- Vice-President of the Centennial Community and Recreation Association (1992-1994)
- Director for the Variety Club Telethon and currently a Variety Club Tent 28 member since 1994

- Committee work includes the City of Scarborough Archival and Records Committee (1995-1997); Budget and Woman's Issues Committees for the Scarborough Board of Education (1994 -1997)
- Studied Marketing Management at Centennial College

Pauline Browes *(appointment expires January 5, 2005)*

- Appointed as a Vice-Chair in October 1995
- Received Bachelor of Arts (Political Science) from York University, Toronto and holds an Elementary Teaching Certificate from Toronto Teachers' College
- Member of Federal Parliament from 1984 to 1993; Cabinet Minister and Privy Councillor (1991-1993); Minister of Indian Affairs and Northern Development (1993); Minister of State – Employment and Immigration (1993); Minister of State – Environment (1991-1993)
- Commissioner and Appeal Commissioner, Residential Tenancy Commission, Government of Ontario (1981-1984)
- Chair and Member of the Scarborough Board of Health (1981-1982)
- Committee member, Chiropractic Review Committee, Government of Ontario (1976-1981)
- Member of Board of Governors, Scarborough Hospital (1994-1995)
- Founder and Curator of the "Spirit of Canada" Art Gallery at Rice Lake, Ontario (1999 -)
- Member of Board of Directors, La Jeunesse Youth Orchestra, Northumberland Country (2001 -)

Kaye M. Sherry *(appointed "At Pleasure")*

- Originally appointed as a part-time Member to the Pesticides Appeal Board in 1975, which was merged with the Environmental Appeal Board in 1978
- Part-time member until appointed the full-time Vice-Chair of the Environmental Appeal Board in 1991
- Cross-appointed as member of the Ontario Rental Housing Tribunal in 1999
- Strong background as one of Canada's leading horticulturalists
- Guest lecturer on propagation, management and environmental issues at various universities and colleges
- Cross-appointed as a Deputy Mining and Lands Commissioner for the period 1997 to 1997

David Hutchens *(appointment expires June 30, 2002)*

- Appointed as a Vice-Chair in June 1999
- Deputy Mayor, Budget Chief, and executive member Toronto City Council (1994-1997)
- Commissioner, Toronto Harbour Commission (1994-1997)
- Director, Runnymede Chronic Care Hospital (1994-1997)
- Director, Humber Watershed Alliance and Task Force (1995-present)
- Recipient of Canadian Institute of Planners S. George Rich 1998 award

- Director and founding member of the Canadian Urban Institute, Toronto (1990-present)
- Vice-Chairman, City of Toronto Planning Advisory Committee (1985-1989)

Part-time Tribunal Members

Franco R. Martelli *(appointed "At Pleasure")*

- Appointed in 1987 and a resident of Whitefish, Ontario
- He has travelled widely in North and South America, Iceland, and the Galapagos
- A founder of the Sudbury Naturalists' Club, active in social and environmentally concerned groups
- A Biologist/Staff Scientist at Science North and manager of its Biosphere Exhibit since 1981

George W. Colburn *(appointed "At Pleasure")*

- Appointed in 1979 and a resident of Thunder Bay, Ontario
- Bachelor of Science degree in Agriculture (McGill), spent a year studying at Imperial College of Science and Technology in London (UK) prior to receiving his Ph.D. (Entomology and Toxicology) from McGill University, and prior to joining the Faculty of Science at Lakehead University in Thunder Bay
- Worked in pesticide research for three years in West Africa followed by a university appointment in Michigan
- For many years was responsible for a major study of chronic and acute toxicity of many families of chlorinated organic compounds
- As Professor Emeritus, is now associated with a laboratory at Lakehead University which carries out regulatory and chronic toxicity testing for industry

David A. B. Pearson *(appointed "At Pleasure")*

- Appointed in 1987 and a resident of Sudbury, Ontario
- Resident of Sudbury, as Associate Professor of Earth Sciences at Laurentian University
- Currently involved in research into lake restoration and is coordinator of the University's Environmental Earth Science program
- As Project Director, was responsible for the development of Science North, where he continues as Associate Director
- Active as a host of radio and T.V. science programs

Mary C. Solomon *(appointed "At Pleasure")*

- Appointed in 1987 and a resident of Ajax, Ontario
- President of Canadian International Consulting Economists Ltd., a firm specializing in developing long-term strategic planning, policies and priorities for private sector companies and governments throughout North America, Africa and Asia

Geographic Focus: *(appointment expires March 31, 2004)*

- Appointed in 2001 and a resident of Dorset, Ontario
- Environment and Resource Manager, Aggregate Producers' Association of Ontario (May 2000 - present)
- Project Manager, ESG International (May 1997 - May 2000)
- Sessional Instructor, Ontario Agricultural College, University of Guelph (September - December 1999)
- Master of Science (Land Resource Management and a Honours B.Sc. (Agr.)), University of Guelph

Note: Carl Dombek's appointment expired in December 2001 and Lou Gerbe's appointment expired in May 2001.

Appendix C

Learning Program 2001 – 2002		
Date	**Topic**	**Speakers**
May 16, 2001	Development in the Commercial Lease Industry, Review and Planning	Glenn Miller, Director, Applied Research, Canadian Urban Institute Margaret Perkins, Partner, Perkins and Partner Planning Consultants
June 20, 2001	Office of the Commissioner of the Environment, Duties, Current Issues and Initiatives with the Environment Review Tribunal Water Resources Regulations	Gail Miller, Environmental Commissioner of Ontario Steve Ashby, Ministry of the Environment
September 27, 2001	Climate Change Programs of the Federal Climate Change Secretariat	Chris Wright, Manager, Federal Provincial Territorial Relations and Co-Manager, National Secretariat on the Federal Climate Change Secretariat Dr. Doug Whitelaw, Director, Climate Research Branch, Meteorological Service of Canada
November 22, 2001	Health Risk Assessment and Management	Catherine Ford, Engineering Specialist, Ministry of the Environment Dr. Robert White, Vice President of Gartner Environmental Inc.

Appendix D

Key Performance Goals and Objectives For Next Fiscal Year 2002-2003

Goals/Outcomes	Measures	Targets/Standards	2002-2003 Commitments
Commitment #1: Public education and information sessions will be used to promote public awareness and knowledge of the Tribunal's mandate and hearing process.	The Tribunal will conduct public information sessions prior to the commencement of its complex hearings. The Tribunal will continue to speak to other interested groups where the Tribunal's profile can be showcased.	Present to a growing number of key audiences.	To review its protocol on when to conduct public information sessions prior to a hearing. The Tribunal will develop an electronic presentation and oral scripts to ensure consistency of information provided by different staff members at all public information sessions.
Commitment #2: Website Access The Tribunal will use its website to communicate with its clients.	The Tribunal will undertake a review of its website to improve ease of access and the Tribunal will continue to track the number of visitors to the site to monitor its use.	Continued increase in the use and efficiency of the site.	The configuration of the website will be reviewed and improvements made to ensure ease of use for the public. A new section of the website will be developed to allow for Electronic Service Delivery.

			Website will be updated each business day to ensure optimal delivery. New Rules of Practice, Practice Directions and Guidelines, etc. will be posted as approved.
Commitment #3: Brochures and Flyers will be updated electronically and in paper form.	The Tribunal will review its brochures and flyers in order to update the information to ensure accuracy and consistency of information.	Continued communication of the hearing process to the Tribunal's clients.	To review and revise the brochures and flyers electronically and in paper copy.

2. Alternative Dispute Resolution Case Managed

Goals/Outcomes	Measures	Targets/Standards	2002-2003 Commitments
Commitment #4: ADR Services Offer ADR services in all appeal cases, where appropriate, and on request in application cases, prior to the commencement of the hearing.	When all parties agree to participate, mediation meetings will generally be held at least 30 days prior to the commencement of the hearing.	Increase the number of cases receiving mediation.	Continue to offer mediation services in every appeal and at the request of the parties in applications. Questionnaires will be sent to all parties at the completion of the ADR session to ascertain their level of satisfaction with the ADR process

			and the Tribunal's involvement. The Tribunal will monitor the success of mediation meetings by tracking the cases that are resolved prior to the hearing.

3. Staff Processing of Hearings Core Business			
Goals/Outcomes	Measures	Targets/Standards	2002-2003 Commitments
Commitment #5: Improve Timeliness in Scheduling Hearings	Hearings will be scheduled within the timeliness standard.	Hearing dates will be scheduled within 30-calendar days from the date of the receipt of the application/appeal and 7-calendar days from the date the Tribunal receives all necessary information/ documentation from the parties	Staff will adhere to the target.
Commitment #6: Electronic Service Delivery (ESD)	ESD option will be available for all applicants/appellants to electronically file applications/appeals and written submissions.	Parties will be able to access ESD options in all types of cases by April 1, 2003.	Administrative procedures will be reviewed and modified to accept applications/appeals filed electronically. The impact of ESD on Tribunal Rules, Guidelines and Policies will be reviewed.

4. Hearing and Core Business			
Goals/Outcomes	Measures	Targets/Standards	2002-2003 Commitments
Commitment #7: Tribunal Members will treat all participants in a hearing with courtesy and respect.	The Tribunal will survey hearing participants through Questionnaires at the completion of the hearing to monitor respect and courtesy. All complaints will be investigated in accordance with the Tribunal's Complaints Policy.	To provide Questionnaires that monitor respect and courtesy accorded to hearing participants by Tribunal members and investigate complaints in accordance with the Tribunal's Complaints Policy.	Results of Hearing Questionnaires will be reported in the Tribunal's Annual Report. All complaints will be treated seriously and the Tribunal will comply with its Complaints Policy.
Commitment #8: Tribunal Members will render timely decisions.	The Tribunal will track the time it takes to render written decisions.	Decisions will be rendered within 30 days of final arguments, excepting hearings with legislated timelines.	In 90% of hearings held, Tribunal members will adhere to the target.

Appendix E

Website Statistics – Downloads

During the period April 1, 2001 to March 31, 2002

Most Popular Downloads – Entire ERT Website:

File Name	Downloads
Environmental Protection Act	15,382
Ontario Water Resources Act	10,903
Environmental Assessment Act	4,572
Pesticides Act	1,468
Dillon v MOE – Order issued April 6, 2001	1,442
Environmental Review Tribunal Annual Report 1999-2000	1,390
Dubeau v MOE	1,357
Dillon v MOE – Order issued May 2, 2001	1,299
Dillon v MOE – Procedural Order issued May 3, 2001	1,214
Township of Tiny v MOE (stay decision)	1,185
Norampac v MOE	1,178
Morrison v MOE	1,169
Township of Grey v MOE (interim stay)	1,111
Domtar v MOE	1,082
Environmental Assessment Brochures	1,005

Most Popular Downloads – Niagara Escarpment Plan Review Hearing:

File Name	Downloads
Form for Submissions Respecting Proposed Changes to the Niagara Escarpment Plan	600
Plan Review Document – Estate Wineries	477
Plan Review Document – Intensive Recreational Development in Escarpment Parks and the Status of Land Trust	336
Niagara Escarpment Plan Review Hearing – Rules of Practice	249
Niagara Escarpment Plan Review Procedural Order #1	223
Niagara Escarpment Plan Review Procedural Order #2	215
Niagara Escarpment Plan Review Recommendation – Appendix B "Comparison of NEC and Hearing Officers' Recommendations"*	210
Plan Review Document – New Plan Maps, Plan Errata and Plan Text (Housekeeping)	206
Niagara Escarpment Plan Review Procedural Order #3	199
Written Submission filed by The Grey Association for Democracy and Growth (file EW002)	196

***note: The Hearing Officers' Recommendation was broken down into 14 different sections on the website for ease of downloading. The total number of downloads from all 14 sections of the Recommendation was 1,535.**

Appendix F

Public Outreach Presentations		
Date	**Presented To**	**Presenter**
June 21, 2001	Zanoor Hosein Chairman Environmental Court of Trinidad	Members and Staff of the Tribunal
June17-19, 2001	Conference of Canadian Council of Administrative Tribunals	Carl Dombek/Susan Dunn
April 4, 2001	Support Our Supports Conference, Society of Ontario Adjudicators and Regulators	Marlene Mills
June 12-14, 2001	Ministry of the Environment Expert Witness Course	Carl Dombek

Appendix G

Financial Report
2001-2002

General Account for the Operation of the Tribunal:

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Salaries & Wages	$ 933,500	$ 933,500	$ 864,940
Employee Benefits	156,600	156,600	161,190
Transportation and Communication	125,900	125,900	50,370
Services	273,800	273,800	191,994
Supplies	56,100	56,100	89,203
Total	$1,545,900	$1,545,900	$1,357,697

Additional Funds allocated for the Water Projection & Regulation Initiative:

Standard Account	Printed Estimates	Approved Budget	Actual Expenditures
Transportation and Communication	$ 20,000	$ 20,000	$ 3,445
Services	$ 160,000	$ 160,000	$ 0
Supplies and Equipment	$ 20,000	$ 20,000	$ 121
Total	$ 200,000	$ 200,000	$ 3,566

NOTE: The Environmental Review Tribunal also received reimbursement of $ 42,543 from the Ministry of Natural Resources for expenditures incurred during fiscal year April 1, 2001 to March 31, 2002 for the 2001 Niagara Escarpment Plan Review Hearing.

Appendix H

Contact Information

For further information about this report or the Environmental Review Tribunal contact:

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